

**THE MAGISTRATES' ASSOCIATION**  
**JUDICIAL POLICY & PRACTICE COMMITTEE**  
**SENTENCING POLICY & PRACTICE COMMITTEE**

**Comments on draft Drinking Banning Orders (DBO) Guidance**

The draft guidance has been considered by members of our Judicial Policy & Practice Committee, and Sentencing Policy & Practice Committee

Firstly, we are surprised that this guidance was not drafted, consulted on and promulgated well in advance, given that the relevant legislation is from 2006. We feel very strongly that 12 days - from 6 – 18 August – is a totally unreasonable time for meaningful consultation on a 40-page document (as yet incomplete) that will come into force on 31 August.

**However, our general comments on the guidance are as follows:**

*Alcohol Treatment Requirement*

A growing number of young people with drug problems are turning to alcohol in the mistaken belief that this is less harmful than drugs and/or will help them to cope with the process of withdrawal. We are not convinced that DBOs will do very much more than the provisions magistrates already have at their disposal and do not believe they answer our demands for more alcohol treatment courses. In addition, we would be concerned if resources were to be diverted from ATR provision to the providers of DBO courses.

*Motivation*

We are constantly reminded by Probation that there is little point in placing people on alcohol treatment programmes unless there is a demonstrable commitment and motivation to change. Under DBOs the motivation required seems to be to secure less onerous conditions on the order and we are concerned that the courts will be setting up people to fail and then have to deal with delivering additional sanctions via breach proceedings.

We also feel that not many people will be ready to pay for these courses. There is a fundamental difference between drink drive rehabilitation courses and a DBO course. The suggestion that someone with a drink related problems would be prepared to admit to it and be willing and able to pay for the DBO course is unrealistic and will eliminate a number of potentially suitable people for the order.

## **Detailed comments on the text:**

### *Young People*

Page 14, para 5, line 6 should read ‘The lead agency **MUST** liaise closely with the Youth Offending Team and the local social services department ...’

We would also like to see mentioned that cases for DBOs for young people under 18 should only be heard by youth court magistrates, albeit sitting in their civil capacity as has been agreed with ASBOs. However, as Youth Courts have no civil jurisdiction as such, they would have to sit as adult magistrates. Nevertheless, we believe it important that magistrates with experience of dealing with young people are required before such a DBO may be ordered.

Page 24 deals with publicity for young people. This section needs to be expanded bearing in mind the impact of publicity on youths under 18.

### *Applications to the Magistrates’ Courts*

Page 15, para 2 states ‘any magistrate or judge may hear the case.’ Does this imply that the order can be made by a single justice? The current wording is not clear.

### *Promoting Awareness*

(Page 10, bullet point 4 and pp 23-25) We feel that excluding an individual from all licensed premises in England and Wales would be disproportionate. It would also present problems in informing licensees across such a wide area about the identity of individuals who have been made subject to one of these orders. Orders such as all licensed premises where alcohol is sold for consumption ‘on the premises’ or ‘all licenses premises with the boundary of .... streets’ would be better alternatives as many food stores now sell alcohol and especially in small towns and villages a blanket ban would be disproportionate and likely to be broken.

### *Interim DBOs in the Magistrates Courts*

On page 18 it states that ‘An application for an *ex parte* interim DBO can only be made with the permission of the Justices’ Clerk. Is this correct? If the Justices’ Clerk is going to delegate this authority then that should be made clear and the level to which he or she can delegate should also be made clear.

### *Licensed Premises (Exclusion of Certain Persons) Act 1980*

On page 22 it is stated that in the 2006 Act it was provided that the Licensed Premises (Exclusion of Certain Persons) Act 1980 would be repealed when DBOs were commenced, but that the Home Office is not in fact taking steps to have the 1980 Act repealed. We believe that the consequence is that there will be overlapping legislation which will cause potential for

confusion even though it should only be a temporary situation until DBOs on both application and post conviction come into force.

### **Other comments**

- The fact that magistrates cannot deliver a DBO on conviction unless one has been requested seems to indicate a lack of trust.
- As an initial response to the suggestion on page 31, we are unsure whether it would be appropriate for magistrates to become guest speakers on DBO courses as this might breach our impartial status
- We are concerned about the eligibility for legal aid for a person against whom an order is sought

### **Matters for clarification**

- Section 1 states that DBOs are not intended to punish and yet it says that the DBO includes prohibitions. This seems to be contradictory.
- The difference between ASBOs and DBOs needs to be made clearer in the text
- Page 12, para 3 refers to a referral order. This will cause confusion with the Referral Order used in the Youth Courts and a better term should be sought.

### **Layout/Typographical errors**

We find the guidance notes overly long and cumbersome. Annex A describes the essentials very concisely and reasonably clearly in less than two pages and we would welcome similar concise language in the rest of the document.

There is a recurring inconsistency in the capitalisation of the words Magistrates' Courts and County Courts in the section headings and also in the text. Sometimes both words are capitalised, sometimes only one, and sometimes neither.

#### Page 11 Duration of a DBO

Final sentence – the first word of the penultimate line should be **likely**.

#### Page 32 Course Arrangements – para 4

Should read: 'Sessions should ... provide... a **choice** of attendance